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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,065	12/19/2001	Ghita Lanzendorfer	Beiersdorf 758-WCG	8343

27386 7590 06/06/2003

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NEW YORK, NY 10017

EXAMINER
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JIANG, SHAOJIA A

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 06/06/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Applicati n No.

10/025,065

Applicant(s)

LANZENDORFER ET AL.

Examiner

Shaojia A. Jiang

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--The MAILING DATE of this communication appears on the cover sheet with the c rrespondence address --

THE REPLY FILED 22 May 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-8 (all).

Claim(s) withdrawn from consideration: none.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
SREENI PADMANABHAN  
PRIMARY EXAMINER

6/6/03

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***Advisory Action***

This Office Action is a response to Applicant's amendment and response after FINAL filed on May 22, 2003. For purpose of Appeal, the proposed amendment has been entered in Paper No. 11.

5. Applicant's proposed amendment and remarks filed May 22, 2003 with respect to the rejection of claims 1-3 and 6 made under 35 U.S.C. 103(a) as being unpatentable over Beerse et al. (6,294,186) and the rejection of claims 4-5 and 7-8 made under 35 U.S.C. 103(a) as being unpatentable over Beerse et al. (6,294,186) in view of Applicant's admission regarding *the prior art* in the specification at page 14-19, have been fully considered but are unpersuasive for reasons of record stated in the Final Office Action dated May 6, 2003, since the narrower range of the amounts of the lipid phase and the copolymer herein in the instant composition is not deemed persuasive to render the claimed invention nonobviousness over the prior art as discussed below.

As discussed in the Final Office Action, the optimization of known amounts of known ingredients in a cosmetic composition according the prior art herein is considered well within the skill of artisan, involving merely routine skill in the art. It has been held that it is within the skill in the art to select optimal parameters, such as amounts of ingredients, in a composition in order to achieve a beneficial effect. See *In re Boesch*, 205 USPQ 215 (CCPA 1980).

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As discussed in the previous Office Action, adding dyes coloring pigments to a cosmetic composition is considered well within conventional skills in cosmetic science or industry. Moreover, Beerse et al. (6,294,186) also teaches that colorings ingredients can be added in the composition therein (col.14 line 59).

Thus, the instant claims are clearly obvious over the teachings of Beerse et al.

Further, as indicated in the Final Office Action, Applicant's Examples 1-7 in the specification at pages 28-30 herein have been fully considered but are not deemed persuasive as to the nonobviousness and/or unexpected results of the claimed invention over the prior art. Examples 1-7 provide no clear and convincing evidence of nonobviousness or unexpected results over the cited prior art since there is no comparison to the same present, i.e., side-by-side comparison. Therefore, the evidence presented in specification herein is not seen to be clear and convincing in support the nonobviousness of the instant claimed invention over the prior art.

For the above stated reasons, said claims are properly rejected under 35 U.S.C. 103(a). Therefore, said rejection is adhered to.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is (703) 305-1008. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, Ph.D., can be reached on (703) 305-1877.

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The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1235.

S. A. Jiang, Ph.D.  
Patent Examiner, AU 1617  
June 5, 2003